

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LeCAROL FLEWELLEN,

Plaintiff,

Civil Action No.: 1:08-cv-1876

vs.

MERCK & CO., INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LeCAROL FLEWELLEN, through her undersigned attorneys Levin, Papantonio et al., sues Defendant Merck & Company, Inc., and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§1332, as complete diversity exists between Plaintiff and Defendant. Plaintiff is a resident of the State of California, and Defendant is incorporated and has its primary place of business in the State of New Jersey. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.
2. Venue is proper within this district pursuant to Case Management Order No. 3, filed November 1, 2006, signed by John F. Keenan, allowing Fosamax-related cases to be filed directly in the Southern District of New York.

II. PARTIES

3. Plaintiff LeCAROL FLEWELLEN was born July 30, 1951. At all relevant times Plaintiff was a resident of the State of California, and used FOSAMAX from approximately June 2004 through approximately November 2006.
4. Defendant is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in New Jersey. The Defendant's registered office is at 820 Bear Tavern Road, City of West Trenton, Mercer County, New Jersey.
5. Defendant was at all relevant times authorized to conduct business in the State of California.
6. At all times relevant Defendant regularly transacted business in the State of California and continues to do so.
7. At all relevant times Defendant, through its agents, servants, employees and apparent agents was the designer, manufacturer, marketer, distributor and seller of FOSAMAX, a bisphosphonate drug used primarily to mitigate or reverse the effects of osteoporosis.
8. Defendant, either directly or through its agents, apparent agents, servants or employees, at all relevant times, sold and distributed FOSAMAX in the State of California for the treatment or prevention of osteoporosis, Paget's Disease and other off-label uses.
9. Defendant derives substantial revenue from pharmaceutical products used or

consumed in the State of California.

10. Defendant expected, or should have expected, that its business activities could or would have consequences within the State of California.

III. SUMMARY OF THE CASE

11. Defendant, either directly or through its agents, apparent agents, servants or employees designed, manufactured, marketed, advertised, distributed and sold FOSAMAX for the treatment of osteoporosis, Paget's Disease, and other off-label uses.
12. As a result of the defective nature of FOSAMAX, persons who were prescribed and ingested FOSAMAX, including Plaintiff LeCAROL FLEWELLEN, have suffered and may continue to suffer severe and permanent personal injuries to the jaw bone, including osteonecrosis of the jaw and other diagnoses of irreversible damage to the jaw.
13. Defendant concealed its knowledge of FOSAMAX's unreasonably dangerous risks from Plaintiff LeCAROL FLEWELLEN, other consumers, and the medical community.
14. Defendant failed to conduct adequate and sufficient post-marketing surveillance of FOSAMAX after it began marketing, advertising, distributing, and selling the drug.
15. As a result of Defendant's actions and inaction, Plaintiff LeCAROL FLEWELLEN was injured due to her ingestion of FOSAMAX, which has caused and will continue to cause Plaintiff's various injuries and damages. Plaintiff accordingly seeks

compensatory damages.

IV. FACTUAL BACKGROUND

16. At all relevant times Defendant was responsible for, or involved in, designing, manufacturing, marketing, advertising, distributing, and selling FOSAMAX.
17. In September 1995, the United States Food and Drug Administration ("FDA") approved Merck's compound alendronate, which is marketed by Merck as FOSAMAX, for various uses, including the treatment of osteoporosis and Paget's Disease.
18. FOSAMAX falls within a class of drugs known as bisphosphonates. Bisphosphonates are used for treating bone conditions such as osteoporosis and Paget's disease. Other drugs within this class such as Aredia and Zometa are also used as chemotherapy and as adjunct chemotherapy but are not indicated for use in non-cancerous conditions such as osteoporosis.
19. There are two classes of bisphosphonates: the N-containing (nitrogenous) and non-N-containing (non-nitrogenous) bisphosphonates. The nitrogenous bisphosphonates include the following: pamidronate (Aredia); ibandronate (Boniva); risedronate (Actonel); and alendronate (FOSAMAX). The non-nitrogenous bisphosphonates include the following: etridonate (Didronel); clodronate (Bonefos and Loron); and tiludronate (Skelid). Alendronate, like the others, contains a nitrogen atom, whereas etridonate, clodronate, and tiludronate do not. The PDR for FOSAMAX confirms

that the molecule contains a nitrogen atom.

20. Throughout the 1990s and 2000s, medical articles and studies appeared reporting the frequent and common occurrence of osteonecrosis of the jaw within the nitrogenous bisphosphonates used for chemotherapy. As with its reported and acknowledged side effects concerning irritation, erosion, and inflammation of the upper gastrointestinal tract, Merck knew or should have known that FOSAMAX, as a nitrogenous bisphosphonate, shared a similar adverse event profiles to the other drugs within this specific subclass of bisphosphonates (i.e., those containing nitrogen).
21. Merck knew and or should have known that bisphosphonates, including FOSAMAX, inhibit endothelial cell function. Similarly, Merck knew or should have known that bisphosphonates also inhibit vascularization of the affected area and induce ischemic changes specific to patients mandibles (lower jaws) and maxillae (upper jaws) and that these ischemic changes appear to be cumulative in nature.
22. Merck also knew or should have known that these factors combine to create a compromised vascular supply in the affected area. As a result, a minor injury or disease can turn into a non-healing wound. That in turn can progress to widespread necrosis (bone death) and osteomyelitis (inflammation of bone marrow).
23. Dentists are now being advised by state dental associations to refrain from using any invasive procedure (such as drilling a cavity) for any patient on FOSAMAX.
24. Once the osteonecrosis begins and becomes symptomatic, it is very difficult to treat and is not reversible.

25. Shortly after Defendant began selling FOSAMAX, reports of osteonecrosis of the jaw and other dental complications among users began surfacing, indicating that FOSAMAX shared the class effects of the other nitrogenous bisphosphonates. Despite this knowledge, Defendant failed to implement further study risk of osteonecrosis of the jaw relative to FOSAMAX. Rather than evaluating and verifying the safety of FOSAMAX with respect to osteonecrosis of the jaw, Defendant proposed further uses of FOSAMAX, such as FOSAMAX-D, and sought to extend the exclusivity period of FOSAMAX through 2018.
26. Osteonecrosis of the jaw is a serious medical event and can result in severe disability and death.
27. Since FOSAMAX was released, the FDA has received a number of reports osteonecrosis of the jaw among users of FOSAMAX.
28. On August 25, 2004, the FDA posted its ODS (Office of Drug Safety) Postmarketing Safety Review on bisphosphonates -- specifically pamidronate (Aredia), zoledronic acid (Zometa), risedronate (Actonel), and alendronate (FOSAMAX). This was an epidemiologic review of the FDA adverse events database conducted by the FDA's Division of Drug Risk Evaluation.
29. As a result of the FDA Review, the FDA observed that the risk of osteonecrosis of the jaw was not confined to bisphosphonates used for chemotherapy. The FDA's review indicated that the osteonecrosis of the jaw was a class effect which specifically extended to the oral bisphosphonate, FOSAMAX.

30. As a result, the FDA recommended and stated that the labeling for FOSAMAX should be amended by Merck to specifically warn about the risk of osteonecrosis of the jaw. Merck has refused to accede to the FDA's request and, to this day, still does not warn of the risk of osteonecrosis of the jaw in its FOSAMAX labeling.
31. Rather than warn patients, and despite knowledge known by Defendant about increased risk of osteonecrosis of the jaw in patients using FOSAMAX, Defendant continues to defend FOSAMAX and minimize unfavorable findings.
32. FOSAMAX is one of Defendant's top selling drugs. Averaging more than \$3 billion a year in sales.
33. Consumers, including Plaintiff LeCAROL FLEWELLEN, who have used FOSAMAX for the treatment or prevention of osteoporosis, Paget's Disease and/or other off-label uses, have several alternative safer products available to treat their conditions.
34. Defendant knew of the significant risk of dental and oral complications caused by ingestion of FOSAMAX, but Defendant did not adequately and sufficiently warn consumers, including Plaintiff LeCAROL FLEWELLEN, or the medical community, of such risks.
35. As a direct result, Plaintiff LeCAROL FLEWELLEN was prescribed FOSAMAX and has been permanently and severely injured, having suffered serious consequences from the ingestion of FOSAMAX. Plaintiff LeCAROL FLEWELLEN requires and will in the future require ongoing medical care and treatment.

36. Plaintiff LeCAROL FLEWELLEN has suffered from mental anguish from the knowledge that she will have life-long complications as a result of the injuries Plaintiff sustained from the use of FOSAMAX.
37. Plaintiff LeCAROL FLEWELLEN was prescribed and began taking FOSAMAX in July 2004.
38. Plaintiff used FOSAMAX as prescribed and in a foreseeable manner.
39. As a direct and proximate result of using FOSAMAX, Plaintiff suffered severe personal injury to her jaw.
40. Plaintiff, as a direct and proximate result of using FOSAMAX, suffered severe mental and physical pain and suffering and has sustained permanent injuries and emotional distress.
41. Plaintiff used FOSAMAX which had been provided to her in a condition that was substantially the same as the condition in which it was manufactured and sold.
42. Plaintiff would not have used FOSAMAX had Defendant properly disclosed the risks associated with the drug. Alternatively, Plaintiff would have known the precursor events of osteonecrosis of the jaw and would have been able to avoid the clinical manifestation of the symptoms as they currently exist.
43. Defendant, through its affirmative misrepresentations and omissions, actively concealed from Plaintiff and her physicians the true and significant risks associated with taking FOSAMAX. The running of any applicable statute of limitations has been tolled by reason of Defendant's fraudulent concealment.

44. As a result of Defendant's actions, Plaintiff and her prescribing physicians were unaware, and could not have reasonably known or have learned through reasonable diligence, that Plaintiff had been exposed to the risks identified in this complaint, and that those risks were the direct and proximate result of Defendant's acts, omissions, and misrepresentations.

V. COUNTS

COUNT I: NEGLIGENCE

45. Plaintiff re-alleges the above paragraphs as if fully set forth herein.
46. Defendant owed Plaintiff, LeCAROL FLEWELLEN, and other consumers, a duty to exercise reasonable care when designing, manufacturing, marketing, advertising, distributing, and selling FOSAMAX.
47. Defendant failed to exercise due care under the circumstances and therefore breached this duty by:
- a. failing to properly and thoroughly test FOSAMAX before releasing the drug to market;
 - b. failing to properly and thoroughly analyze the data resulting from the pre-marketing tests of FOSAMAX;
 - c. failing to conduct sufficient post-market testing and surveillance of FOSAMAX;
 - d. designing, manufacturing, marketing, advertising, distributing, and selling FOSAMAX to consumers, including Plaintiff, without an adequate warning of the significant and dangerous risks of FOSAMAX and without proper instructions to avoid the harm which

could foreseeably occur as a result of using the drug;

e. failing to exercise due care when advertising and promoting FOSAMAX; and

f. negligently continuing to manufacture, market, advertise, and distribute FOSAMAX after Defendant knew or should have known of its adverse effects.

48. As a direct and proximate consequence of Defendant's actions, omissions, and misrepresentations, Plaintiff LeCAROL FLEWELLEN sustained significant and permanent injury to her jaw. In addition, Plaintiff required and will continue to require healthcare and services. Plaintiff has incurred and will continue to incur medical and related expenses. Plaintiff also has suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications, and supplies. Plaintiff has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

49. Defendant's conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff, thereby entitling Plaintiff to punitive damages so as to punish Defendant and deter it from similar conduct in the future.

COUNT II: STRICT LIABILITY

50. Plaintiff re-alleges the above paragraphs as if fully set forth herein.

51. Defendant manufactured, sold, distributed, marketed, and/or supplied FOSAMAX in a defective and unreasonably dangerous condition to consumers, including Plaintiff LeCAROL FLEWELLEN.
52. Defendant designed, manufactured, sold, distributed, supplied, marketed, and/or promoted FOSAMAX, which was expected to reach and did in fact reach consumers, including Plaintiff, without substantial change in the condition in which it was manufactured and sold by Defendant.
53. Plaintiff used FOSAMAX as prescribed and in a manner normally intended, recommended, promoted, and marketed by Defendant.
54. FOSAMAX failed to perform safely when used by ordinary consumers, including Plaintiff, including when it was used as intended and in a reasonably foreseeable manner.
55. FOSAMAX was defective in its design and was unreasonably dangerous in that its unforeseeable risks exceeded the benefits associated with its design or formulation.
56. FOSAMAX was defective in design or formulation in that it posed a greater likelihood of injury than other similar medications and was more dangerous than an ordinary consumer could reasonably foresee or anticipate.
57. FOSAMAX was defective in its design and was unreasonably dangerous in that it neither bore nor was packaged with nor accompanied by warnings adequate to alert consumers, including Plaintiff, of the risks described herein, including, but not limited to, the risk of osteonecrosis of the jaw.

58. Although Defendant knew or should have known of the defective nature of FOSAMAX, it continued to design, manufacture, market, and sell FOSAMAX so as to maximize sales and profits at the expense of the public health and safety. By so acting, Defendant acted with conscious and deliberate disregard of the foreseeable harm caused by FOSAMAX.
59. Plaintiff could not, through the exercise of reasonable care, have discovered FOSAMAX's defects or perceived the dangers posed by the drug.
60. As a direct and proximate consequence of Defendant's conduct, Plaintiff LeCAROL FLEWELLEN sustained significant and permanent injury to her jaw. In addition, Plaintiff required and will continue to require healthcare as a result of her injury. Plaintiff has incurred and will continue to incur medical and related expenses. Plaintiff also has suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications, and supplies. Plaintiff has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.
61. Defendant's conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff, thereby entitling Plaintiff to punitive

damages so as to punish Defendant and deter it from similar conduct in the future.

COUNT III: BREACH OF EXPRESS WARRANTY

62. Plaintiff re-alleges the above paragraphs as if fully set forth herein.
63. Defendant expressly represented to Plaintiff LeCAROL FLEWELLEN, other consumers and the medical community that FOSAMAX was safe and fit for its intended purposes, was of merchantable quality, did not produce any dangerous side effects, and had been adequately tested.
64. FOSAMAX does not conform to Defendant's express representations because it is not safe, has numerous and serious side effects, and causes severe and permanent injuries.
65. At all relevant times FOSAMAX did not perform as safely as an ordinary consumer would expect, when used as intended or in a reasonably foreseeable manner.
66. Plaintiff LeCAROL FLEWELLEN, other consumers, and the medical community relied upon Defendant's express warranties.
67. As a direct and proximate result of Defendant's actions, Plaintiff LeCAROL FLEWELLEN sustained serious significant and permanent injury to her jaw. In addition, Plaintiff required and will continue to require healthcare and services as a result of her injury. Plaintiff has incurred and will continue to incur medical and related expenses as a result of her injury. Plaintiff also has suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and

activation of latent conditions, and other losses and damages. Plaintiff's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications, and supplies. Plaintiff has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.

68. Defendant's conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff, thereby entitling Plaintiff to punitive damages so as to punish Defendant and deter it from similar conduct in the future.

COUNT IV: BREACH OF IMPLIED WARRANTY

69. Plaintiff re-alleges the above paragraphs as if fully set forth herein.
70. Defendant manufactured, distributed, advertised, promoted, and sold FOSAMAX.
71. At all relevant times, Defendant knew of the use for which FOSAMAX was intended and impliedly warranted the product to be of merchantable quality and safe and fit for such use.
72. Defendant was aware that consumers, including Plaintiff LeCAROL FLEWELLEN, would use FOSAMAX for treatment or prevention of osteoporosis or Paget's Disease and for other off-label purposes.
73. Plaintiff and the medical community reasonably relied upon the judgment and sensibility of Merck to sell FOSAMAX only if it was indeed of merchantable quality and safe and fit for its intended use.
74. Defendant breached its implied warranty to consumers, including Plaintiff;

FOSAMAX was not of merchantable quality or safe and fit for its intended use.

75. Consumers, including Plaintiff, and the medical community, reasonably relied upon Defendant's implied warranty for FOSAMAX.
76. FOSAMAX reached consumers without substantial change in the condition in which it was manufactured and sold by Defendant.
77. As a direct and proximate result of Defendant's action, Plaintiff LeCAROL FLEWELLEN sustained significant and permanent injury to her jaw. In addition, Plaintiff required and will continue to require healthcare and services as a result of her injury. Plaintiff has incurred and will continue to incur medical and related expenses as a result of her injury. Plaintiff also has suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications, and supplies. Plaintiff has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.
78. Defendant's conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff, thereby entitling Plaintiff to punitive damages so as to punish Defendant and deter it from similar conduct in the future.

COUNT V: FRAUDULENT MISREPRESENTATION

79. Plaintiff re-alleges the above paragraphs as if fully set forth herein.
80. Defendant made fraudulent misrepresentations with respect to FOSAMAX in the following particulars:
- a.. Defendant represented through its labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions that FOSAMAX had been tested and found to be safe and effective for the treatment of osteoporosis and Paget's Disease; and
- b. Defendant represented that FOSAMAX was safer than other alternative medications.
81. Defendant knew that its representations were false, yet it willfully, wantonly, and recklessly disregarded its obligation to provide truthful representations regarding the safety and risk of FOSAMAX to consumers, including Plaintiff, and the medical community.
82. The representations were made by Defendant with the intent that doctors and patients, including Plaintiff, rely upon them.
83. Defendant's representations were made with the intent of defrauding and deceiving Plaintiff, other consumers, and the medical community to induce and encourage the sale of FOSAMAX.
84. Plaintiff LeCAROL FLEWELLEN, Plaintiff's doctors, and others relied upon the representations.

85. Defendant's fraudulent representations evinced its callous, reckless, willful, and depraved indifference to the health, safety, and welfare of consumers, including Plaintiff.
86. As a direct and proximate result, Plaintiff LeCAROL FLEWELLEN sustained significant and permanent injury to her jaw. In addition, as a result of her injury, Plaintiff required and will continue to require healthcare and services, and has incurred and will continue to incur medical and related expenses. Plaintiff also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting conditions and activation of latent conditions, and other losses and damages. Plaintiff's direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications, and supplies. Plaintiff has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage-earning capacity.
87. Defendant's conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff, thereby entitling Plaintiff to punitive damages so as to punish Defendant and deter it from similar conduct in the future.

COUNT VI: FRAUDULENT CONCEALMENT

88. Plaintiff re-alleges the above paragraphs as if fully set forth herein.

89. Defendant fraudulently concealed information with respect to FOSAMAX in the following particulars:

a. Defendant represented through its labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions that FOSAMAX was safe and fraudulently withheld and concealed information about the substantial risks of using FOSAMAX; and

b. Defendant represented that FOSAMAX was safer than other alternative medications and fraudulently concealed information which demonstrated that FOSAMAX was not safer than alternatives available on the market.

90. Defendant had sole access to material facts concerning the dangers and unreasonable risks associated with FOSAMAX.

91. Defendant's concealment of information about the risks associated with taking FOSAMAX was intentional, and the representations made by Defendant were known by Defendant to be false.

92. The concealment of information and the misrepresentations about FOSAMAX were made by Defendant with the intent that doctors and patients, including Plaintiff, rely upon them.

93. Plaintiff LeCAROL FLEWELLEN, Plaintiff's doctors, and others relied upon the representations and were unaware of the substantial dental and oral risks associated with taking FOSAMAX that Defendant had concealed from them.

94. As a direct and proximate result of Defendant's fraudulent concealment and misrepresentations, Plaintiff LeCAROL FLEWELLEN suffered significant and permanent injury to her jaw as well as severe and permanent injuries, including pain, mental and physical anguish and suffering, a diminished capacity for the enjoyment of life, aggravation of preexisting conditions and activation of latent conditions, and a fear of developing other harmful conditions or problems as a result of the injury. Plaintiff has suffered and will continue to suffer a loss of wages and wage-earning capacity and has incurred expenses for medical care and treatment due to the injuries caused by FOSAMAX.
95. Defendant's conduct as described above was committed with knowing, conscious, wanton, willful, and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff, thereby entitling Plaintiff to punitive damages so as to punish Defendant and deter it from similar conduct in the future.

GLOBAL PRAYER FOR RELIEF


WHEREFORE, Plaintiff demands judgment against Defendant, as follows:

- a. compensatory damages on each cause of action;
- b. punitive damages on each cause of action;
- c. reasonable attorneys' fees where recoverable;
- d. costs of this action; and
- e. such other additional and further relief as the Court may deem necessary,

appropriate, and just.

VI. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all counts and issues so triable.



MEGHAN M. TANS
TIMOTHY M. O'BRIEN
LEVIN, PAPANTONIO, THOMAS, MITCHELL,
ESCHSNER & PROCTOR, P.A.
316 South Baylen Street, Suite 600 (32502)
P. O. Box 12308
Pensacola, Florida 32591
Telephone (850) 435-7131
FAX (850) 436-6131

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS LeCAROL FLEWELLENDEFENDANTS MERCK & CO., INC.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

LEVIN, PAPANTONIO, ET. AL., 316 S. BAYLEN STREET,
SUITE 600, PENSACOLA, FL 32591

ATTORNEYS (IF KNOWN)

Meghan M. Tans, Timothy M. O'Brien

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

28 U.S.C. 1332PRODUCT LIABILITY - DEFECTIVE PHARMACEUTICAL (Fosamax)Has this or a similar case been previously filed in SDNY at any time? No ☐ Yes? ☒ Judge Previously Assigned KEENANIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☒ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

| TORTS | | ACTIONS UNDER STATUTES | |
|---|--|--|---|
| CONTRACT | PERSONAL INJURY | FORFEITURE/PENALTY | BANKRUPTCY |
| [] 110 INSURANCE | [] 310 AIRPLANE | [] 810 AGRICULTURE | [] 422 APPEAL |
| [] 120 MARINE | [] 315 AIRPLANE PRODUCT LIABILITY | [] 820 FOOD & DRUG | [] 28 USC 158 |
| [] 130 MILLER ACT | [] 320 ASSAULT, LIBEL & SLANDER | [] 825 DRUG RELATED SEIZURE OF PROPERTY | [] 423 WITHDRAWAL |
| [] 140 NEGOTIABLE INSTRUMENT | [] 330 FEDERAL EMPLOYERS' LIABILITY | [] 21 USC 881 | [] 28 USC 157 |
| [] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT | [] 340 MARINE PRODUCT LIABILITY | [] 830 LIQUOR LAWS | PROPERTY RIGHTS |
| [] 151 MEDICARE ACT | [] 345 MARINE PRODUCT LIABILITY | [] 640 RR & TRUCK | [] 820 COPYRIGHTS |
| [] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS) | [] 350 MOTOR VEHICLE PRODUCT LIABILITY | [] 650 AIRLINE REGS | [] 830 PATENT |
| [] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS | [] 355 MOTOR VEHICLE PRODUCT LIABILITY | [] 660 OCCUPATIONAL SAFETY/HEALTH | [] 840 TRADEMARK |
| [] 160 STOCKHOLDERS SUITS | [] 360 OTHER PERSONAL INJURY | [] 690 OTHER | SOCIAL SECURITY |
| [] 190 OTHER CONTRACT | | LABOR | [] 861 MIA (1395FF) |
| [] 195 CONTRACT PRODUCT LIABILITY | | [] 1710 FAIR LABOR STANDARDS ACT | [] 862 BLACK LUNG (923) |
| [] 196 FRANCHISE | | [] 1720 LABOR/MGMT RELATIONS | [] 863 DIWC (405(g)) |
| | | [] 1730 LABOR/MGMT REPORTING & DISCLOSURE ACT | [] 864 DIWW (405(g)) |
| | | [] 1740 RAILWAY LABOR ACT | [] 865 RSI (405(g)) |
| | | [] 1790 OTHER LABOR LITIGATION | FEDERAL TAX SUITS |
| | | [] 1791 EMPL RET INC SECURITY ACT | [] 870 TAXES |
| | | | [] 871 IRS-THIRD PARTY |
| | | | [] 20 USC 7609 |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | OTHER STATUTES |
| [] 210 LAND CONDEMNATION | [] 441 VOTING | [] 510 MOTIONS TO VACATE SENTENCE | [] 400 STATE REAPPORTIONMENT |
| [] 220 FORECLOSURE | [] 442 EMPLOYMENT | [] 28 USC 2255 | [] 410 ANTI-TRUST |
| [] 230 RENT LEASE & EJECTMENT | [] 443 HOUSING | [] 530 HABEAS CORPUS | [] 430 BANKS & BANKING |
| [] 240 TORTS TO LAND | [] 444 WELFARE | [] 535 DEATH PENALTY | [] 450 COMMERCE/ICC RATES/ETC |
| [] 246 TORT PRODUCT LIABILITY | [] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT | [] 540 MANDAMUS & OTHER | [] 460 DEPORTATION |
| [] 290 ALL OTHER REAL PROPERTY | [] 446 AMERICANS WITH DISABILITIES - OTHER | [] 550 CIVIL RIGHTS | [] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO) |
| | [] 440 OTHER CIVIL RIGHTS | [] 555 PRISON CONDITION | [] 480 CONSUMER CREDIT |
| | | | [] 490 CABLE/SATELLITE TV |
| | | | [] 810 SELECTIVE SERVICE |
| | | | [] 850 SECURITIES/COMMODITIES/EXCHANGE |
| | | | [] 875 CUSTOMER CHALLENGE |
| | | | [] 891 AGRICULTURE ACTS |
| | | | [] 892 ECONOMIC STABILIZATION ACT |
| | | | [] 893 ENVIRONMENTAL MATTERS |
| | | | [] 894 ENERGY ALLOCATION ACT |
| | | | [] 895 FREEDOM OF INFORMATION ACT |
| | | | [] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE |
| | | | [] 950 CONSTITUTIONALITY OF STATE STATUTES |
| | | | [] 890 OTHER STATUTORY ACTIONS |

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE KEENAN DOCKET NUMBER 06-MDL 1789Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN X IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is a pro se litigant

(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

| | | | | | | | | |
|--------------------------|---------------------------------------|--------------|---|--------------|--------------|---|--------------|--|
| CITIZEN OF THIS STATE | PTF [] 1 | DEF [] 1 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | PTF [] 3 | DEF [] 3 | INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE | PTF [] 5 | DEF <input checked="" type="checkbox"/> 5 |
| CITIZEN OF ANOTHER STATE | <input checked="" type="checkbox"/> 2 | [] 2 | INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE | [] 4 | [] 4 | FOREIGN NATION | [] 6 | [] 6 |

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

LeCAROL FLEWELLEN
 5701 Manzanita Avenue
 #30
 Carmichael, CA 95608

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

MERCK & CO., INC.
 ONE MERCK DRIVE
 P.O. BOX 100, WS3AB-05
 WHITEHOUSE STATION, NEW JERSEY, 08889-0100

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE 2/23/08 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

☒ YES (DATE ADMITTED Mo. 5 Yr. 2007)

Attorney Bar Code # XXXXX

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

AO 440 (Rev. 10/93) Summons in a Civil Action - SDNY WEB 4/99

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

LeCAROL FLEWELLEN

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

MERCK & CO., INC.

TO: (Name and address of defendant)

MERCK & CO., INC.
C/O C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK, 10011

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

MEGHAN M. TANS
LEVIN, PAPANTONIO, THOMAS, MITCHELL, ECHSNER & PROCTOR, P.A.
316 S. BAYLEN STREET, SUITE 600
PENSACOLA, FL 32591

an answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

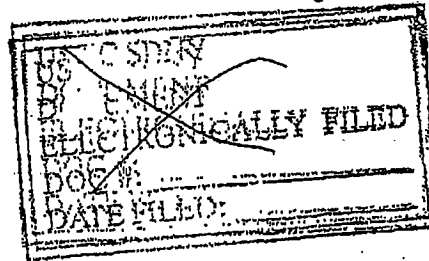
(BY) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons In a Civil Action -SDNY WEB 4/99

| RETURN OF SERVICE | | |
|---|----------|-------|
| Service of the Summons and Complaint was made by me ¹ | DATE | |
| NAME OF SERVER (PRINT) | TITLE | |
| <i>Check one box below to indicate appropriate method of service</i> | | |
| <input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____ | | |
| <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____ | | |
| <input type="checkbox"/> Returned unexecuted: _____ _____ _____ | | |
| <input type="checkbox"/> Other (specify): _____ _____ _____ | | |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL |
| | | |
| DECLARATION OF SERVER | | |
| <p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date _____ Signature of Server _____</p> <p style="text-align: right;">_____ Address of Server</p> | | |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Case 1:06-md-01789-JFK-JCF Document 110 Filed 05/30/2007 Page 1 of 3



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

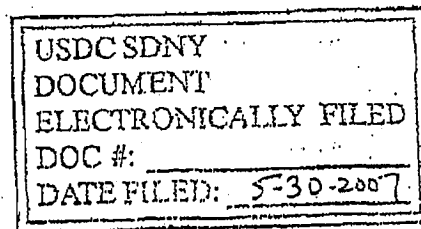
IN RE: Fosamax Products Liability
Litigation

1:06-md-1789 (JFK)

ORDER FOR ADMISSION
PRO HAC VICE

This Document Relates to: MDL-1789

Fredericka Allen v. Merck Case No.: 06-cv-9452
Bridget Arcemont v. Merck Case No.: 07-cv-3389
Virginia Bergeson v. Merck Case No.: 06-cv-9454
Shirley Bales v. Merck Case No.: 06-cv-9453
Sharon Bradford v. Merck Case No.: 07-cv-477
Winnie Braswell v. Merck Case No.: 1:07-cv-1413
Roberta Brodin v. Merck Case No.: 07-cv-3466
Brenda Carpenter v. Merck Case No.: 07-cv-3464
Sonja Daroff v. Merck Case No.: 07-cv-3462
Debra Flores v. Merck Case No.: 07-cv-02442
Sandra Hall v. Merck Case No.: 07-cv-3467
Porcia Hardy v. Merck Case No.: 07-cv-797
Carolyn Hester v. Merck Case No.: 06-cv-9450
Pamela Hines v. Merck Case No.: 07-cv-480
Rochelle Kenig v. Merck Case No.: 07-cv-00478
Anna Merwin v. Merck Case No.: 07-cv-3463
Janice Moe v. Merck Case No.: 07-cv-00479
James Napier v. Merck Case No.: 06-cv-9451
Wilma Parslow v. Merck Case No.: 07-cv-3465
Tamara Porter v. Merck Case No.: 07-cv-790
Margaret Szelove v. Merck Case No.: 07-cv-3459
Maxine Sklute v. Merck Case No.: 07-cv-3461
Edna Sykes v. Merck Case No.: 07-cv-1412
Kathleen Toelke v. Merck Case No.: 06-cv-7629
Reyna Vandercar v. Merck Case No.: 06-cv-11329
Nellie Wade v. Merck Case No.: 06-cv-9453
Carol Young v. Merck Case No.: 06-cv-0531
Bonnie Laughlin v. Merck Case No.: 07-cv-3827



Considering the Certificate of Good Standing submitted by counsel, IT IS

HEREBY ORDERED that:

Case 1:06-md-01789-JFK-JCF Document 110 Filed 05/30/2007 Page 2 of 3

Meghan M. Tans
Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A.
316 S. Baylen Street, Suite 400
P.O. Box 12308 (32591)
Pensacola, FL 32502
Phone: (850) 435-7181
Facsimile: (850) 436-6181
Email: mtans@levinlaw.com

is admitted to practice pro hac vice as counsel for the plaintiffs in the above-referenced
MDL proceeding.

Signed this 30 day of May, 2007, at New York, New
York.


UNITED STATES DISTRICT COURT JUDGE

Case 1:06-md-01789-JFK-JCF Document 110 Filed 05/30/2007 Page 3 of 3

AO 136 (Rev. 9/98) Certificate of Good Standing

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

CERTIFICATE OF GOOD STANDING

I, Sheryl L. Loesch, Clerk of this Court,

certify that Meghan M. Tans, Bar # 00888745,

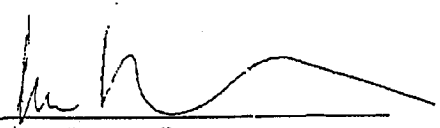
was duly admitted to practice in this Court on

April 22, 2005, and is in good standing

as a member of the Bar of this Court.

Dated at Jacksonville, Florida, on May 17, 2007.

SHERYL L. LOESCH
CLERK


DEPUTY CLERK